



OFFICE OF  
INSURANCE COMMISSIONER

TECHNICAL ASSISTANCE ADVISORY

T 06-03

TO: All Health Carriers

SUBJECT: Compliance with RCW 48.43.055 and WAC 284-43-322 Regarding  
Alternative Dispute Resolution Provisions in Provider Contracts

DATE: August 2, 2006

The OIC is issuing this Technical Assistance Advisory ("TAA") to assist carriers in complying with RCW 48.43.055 and WAC 284-43-322 in light of the Washington Supreme Court's recent decision in *Kruger Clinic Orthopaedics v. Regence Blueshield*, [Docket No. 76719-0, filed 7/13/06] regarding alternative dispute resolution ("ADR") provisions in provider contracts. The Supreme Court confirmed that RCW 48.43.055 and WAC 284-43-322 prohibit carriers from requiring health care providers to enter into binding ADR, such as binding arbitration. Binding arbitration clauses or other forms of binding ADR clauses in provider contracts are not enforceable. While carriers may require providers to engage in some form of ADR prior to seeking a judicial remedy, carriers may not prohibit providers from seeking a judicial remedy such as a civil lawsuit.

The OIC is aware that there are provider contracts subject to OIC regulation that do not comply with RCW 48.43.055 and WAC 284-43-322. The OIC reviewed provider contracts on file and found that the ADR provisions that violate the law are worded in a variety of ways. Some clauses expressly require binding arbitration. Other clauses allow the carrier to file an arbitrator's award as a judgment in court, which has the effect of making the arbitration binding. Then again, other clauses imply that the arbitration is binding by referring to "nonbinding mediation" but remaining silent as to whether the arbitration option is binding.

Consequently, carriers must review all dispute resolution processes and procedures for review and adjudication of health care provider complaints to determine whether they could be interpreted as requiring binding ADR or prohibiting a judicial remedy. If they could be interpreted as such, they are not in compliance with the law and must be corrected and refiled in their entirety with the OIC. In order to make sure that the procedures are clear on this point, carriers may consider including an express statement, such as: "Alternative dispute resolution, such as mediation and arbitration, is not binding and is not required to the exclusion of judicial remedies."

In order for the OIC to determine compliance with RCW 48.43.055 and WAC 284-43-322, carriers must incorporate their entire dispute resolution process into the provider contract.

Carriers are required to refile provider contracts for any material changes. Per WAC 284-43-330, all changes to contracts must be indicated through strike outs for deletions and underlines (highlighted language is acceptable) for new material. A "clean" template must also be provided, as well as the copy of the amendment that will be sent to providers.

It is requested that carriers file new templates as soon as possible but no later than 120 days after the date of this TAA.

If you have questions concerning this Technical Assistance Advisory you may contact Donna Dorris, Health and Disability Manager, at (360) 725-7119 or [donnad@oic.wa.gov](mailto:donnad@oic.wa.gov).